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Supreme Court, U.S.
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CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

DANIEL G. GELLERT,

Petitioner,

v.

UNITED STATES DISTRICT COURT for the
SOUTHERN DISTRICT OF FLORIDA

PETITION FOR CERTIORARI

In pro se, by:

Daniel G. Gellert
P. O. Box 320370
Cocoa Beach,
Florida 32932
(407) 783-9412

44 pp

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QUESTIONS PRESENTED FOR REVIEW

Must a trial judge, while under criminal investigation by a Federal Grand Jury, disclose this fact to a plaintiff? Allow the plaintiff to file for recusal, and having failed to do so, is this a violation of plaintiff's due process rights under the **Fifth Amendment**?

Does a plaintiff have the same rights under Rule 56, to the entry of summary judgement motions as defendants have? To secure the just, speedy and inexpensive determination of his cause as a moving party, terminating the action in his favor? Is this guaranteed by the **Seventh Amendment**?

Can a union force the discharge of a minority employee under the forced collection of union dues, when membership was not available on the same terms as were applicable to others? When this non-member objected to his dues being used for political purposes, had an authorization for the voluntary deduction of his dues, paid the dues, and still he was discharged, is this a violation of his rights under the **First, Fifth and Fourteenth Amendments**?

Can "arbital immunity" be granted to union and employer officials under the Railway Labor Act and ERISA?

Is the forced collection of union dues a "minor dispute" under the Railway Labor Act, (2) 11, and therefore subject only to the exclusive remedy of arbitration, or are there Constitutional rights under the **First, Fifth and Fourteenth Amendments**, which are not "second bites at the apple", but provide federal court review and jurisdiction? Can arbitration resolve Petitioner's Constitutional rights in this cause, as courts below have ruled, or is this subject to review, and does a citizen have the right to petition the Supreme Court to hear his Constitutional grievance?

Just how far can the forced collection of union dues move against an employee? Does the **First, Fifth and Fourteenth Amendments** provide protection as to ERISA and Workers' Compensation Law benefits, or are these laws also part of the RLA (2)11 scheme to harm and punish an employee for the alleged failure to pay union dues?

LIST OF PARTIES

RESPONDENTS/DEFENDANTS in Court Case 90-1113-CIV-MOORE:

EASTERN AIRLINES FIXED BENEFIT RETIREMENT INCOME PLAN FOR PILOTS and employee benefit pension plan

EASTERN AIRLINES, INC., solely as Administrator of such defendant plan

PENSION BENEFIT GUARANTY CORPORATION

EASTERN AIRLINES RETIREMENT BOARD a/k/a PENSION DISPUTE BOARD

AIR LINE PILOTS ASSOCIATION

ALAN C. GIBSON

WILLIAM R. TEGTMAN

JACK N. MOGUS

CHARLES COPELAND

TRAVELERS INSURANCE CORPORATION

HONORABLE K. MICHAEL MOORE

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GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Plaintiff's due process rights have been violated by the courts below. Plaintiff has Constitutional protection under the Fifth Amendment to an unbiased court, a judiciary free from a taint of corruption, a District Court Judge who is free from the dark cloud of a criminal investigation.

Judge K. Michael Moore failed to inform plaintiff that he was under investigation for violations of felony criminal laws of the United States, accepting gratuities from individuals doing business with the U.S. Marshal Service under his direction, individuals who have been found guilty of bribery.

Judge Moore denied plaintiff's proper motions for summary judgements, which in this circumstance is a denial of due process, and violates plaintiff's Fifth and Seventh Amendment's Constitutional protection. This raises issues as to due process, plaintiff's rights to his summary judgements under the Seventh Amendment, in the orders of Judge Moore, who has accepted gratuities in violation of

federal ethical rules. See: Celotex Corporation v. Catrett, 477 U.S. 317; Matsushita Electrical Industrial Co. Ltd. v. Zenith Radio Corporation, 475 U.S. 574; Jack Anderson v. Liberty Lobby, Inc. 477 U.S. 242.

The Appeals Court has denied plaintiff a review of these Constitutional issues, which provides for jurisdiction herein.

The appeals court has found on November 20, 1992 that previous orders of the court below were not final, and these issues are properly before the district court for reconsideration and reversal. EXHIBIT A.

The district court in its Sept. 13, 1993 OMNIBUS ORDER ON PENDING MOTIONS, upheld the arbital immunity for the two Air Line Pilots officials, and further granted this immunity to the two employer officials. EXHIBIT B.

The court denied Petitioner's motions for summary judgement by stating: "Plaintiff's Motions for Summary Judgement based upon failure to respond to discovery or the Amended Complaints are Denied." Petitioner did not file a motion for summary judgement which was based upon defendant's failure to respond, and the Federal Rule of Civil Procedure 56, has no basis to consider defendants'

failure to respond to discovery or the complaint.

The court also filed an OMNIBUS ORDER on April 14, 1994, in this order the court has lumped Petitioner's other supporting motions in seeking his just due, the entry of his motion for summary judgement, and has made Petitioner's cause subject to dismissal as to any additional motions to support his proper motions for summary judgements. EXHIBIT C.

In Case No. 89 B 10448, U.S. Bankruptcy Court Southern District of New York, defendants successfully opposed Petitioner's recovery from the Eastern Airlines, Inc. estate, based upon unresolved summary issues, a magistrate's report, and a motion to strike.

The bankruptcy court hearing was on November 15, 1994, which has effectively denied Petitioner recovery, since the Petitioner's motions for summary judgements are continued to be denied by the district court.

Defendants argued to the bankruptcy court, which the court accepted, that petitioner's rights as to the forced collection of union dues was a "minor dispute" under the Railway Labor Act, and arbitration was Petitioner's exclu-

sive remedy, and a suit in a federal court was a "second bite at the apple", and the federal courts lacked jurisdiction.

This is in direct conflict with this court's previous opinions in IAM v Street, Communication Workers v. Beck, in which this Court established First, Fifth and Fourteenth Amendment rights, and in this case there is a Constitutional crisis, which is presented for certiorari and review.

This petition seeks to review the denial of a writ of mandamus by the United States Court of Appeals for the Eleventh Circuit, dated February 23, 1994. EXHIBIT D and denial of rehearsing dated, July 8, 1994. EXHIBIT E.

Petitioner was granted an extension of time to file the instant petition for certiorari, the October 5, 1994 order is attached as EXHIBIT G.

There are no issues as to statute of limitations, since the final administrative remedies were concluded during 1992 and 1994.

CONSTITUTIONAL AND STATUTORY PROVISIONS

FOR JURISDICTION

Petitioner's due process rights have unquestionably been denied by Judge K. Michael Moore's prior conduct at the U.S. Marshal Service, these actions which were based upon the acceptance of illegal gratuities, in violation of Federal Ethical Standards, raises serious and fatal concerns as to his denial of Petitioner's Constitutional rights to Summary Judgements under Rule 56, Federal Rules of Civil Procedures, and Local Rules 7.1 and 7.5, which state in part:

> **Rule 56. Summary Judgement (a) for Claimant.** A part seeking to recover upon a claim, . . . at any time after the expiration of 20 days from commencement of the action . . . **(c) Motions and Proceedings Thereon**. . . . The judgement sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law. **(f) When Affidavits are Unavailable.** Should it appear from affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgement or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Local RULE 7.1.C. Memorandum of Law. Each party opposing a motion shall serve and file an opposing memorandum of law . . . Failure to do so may be deemed sufficient cause for granting the motion by default.

Local RULE 7.5 MOTIONS FOR SUMMARY JUDGE MENT. Motions for summary judgement shall be accompanied by a memorandum of law, necessary affidavits, and a concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried . . . All material facts set forth in the statement required to be served by the moving party will be deemed admitted unless controverted by the opposing party's statement.

"The plaintiff in an action in Federal District Court cannot claim to have been 'railroaded' by a premature motion for summary judgement, where the motion is filed 12 months after the commencement of the action; any potential problem with a premature motion can be adequately dealt with under the Rule 56(f) of the Federal Rules of Civil Procedure, which allows a summary judgement motion to be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery" Celotex Corp. v. Catrett, 477 U.S. 317, at 321, and at 320 this Court further stated "Federal Rules of Civil Procedure mandates the entry of

summary judgement, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, in such situation, there can be no genuine issue as to any material fact . . . the moving party is entitled to judgement as a matter of law".

While Celotex Supra, and other cases decided by this Court, were cases in which the moving parties were Defendants, Petitioner invokes the Seventh Amendment herein, and the same and exact standard should also apply to nonmoving defendants, and Petitioner's summary judgement should be granted.

Defendants needed sufficient showing of an essential element in their case, with respect to their burden of proof, to demonstrate the District Court, that their action in the discharge of the Petitioner did not violate the First, Fifth and Fourteenth Amendments of the Constitution .

Defendant Air Line Pilots Association, ("ALPA") had a duty to grant plaintiff's application for union membership, prior to a demand for the forced collection of union dues,

under the Railway Labor Act, ("RLA") 2(11), Union Security clause.

Defendants ALPA, as plaintiff's union, and sole bargaining representative, and Eastern Airlines, Inc., plaintiff's employer had a duty to honor plaintiff's voluntary authorization under the RLA's 2(11) (b), and deduct his union security obligation, since plaintiff had this authorization continuously on file from December 1971, to at least January, 1993.

Plaintiff did pay the union security payment requested, none-the-less defendants terminated his employment on June 17m 1986 for "failure to pay union dues".

Plaintiff is a minority under the law, and seeks the protection of the Constitutions First, Fifth and Fourteenth Amendments, see: International Association of Machinists v. S.B. Street, 367 U.S. 740; Communications Workers of America v. Harry E. Beck, 487 U.S. 735, since the termination of his employment was in clear and documented violation of these Constitutional provisions and safeguards.

Defendants' actions in further taking plaintiff's benefits under the independent statutes of ERISA and Workers'

Compensation Laws, solely in moving the harsh and punitive provisions of the RLA union Security, 45 U.S.C. 152 Eleventh, raises constitutional questions, if the First, Fifth and Fourteenth Amendments allow these new punitive provision to be so implemented.

Petitioner requested from the union, the cost of negotiating and administering the agreement, to protect his rights in free speech, and demanded union membership. These rights have been recognized by this Court: "Congress incorporated safeguards in the statute to protect dissenters' interest . . . to prevent discharge of employees for nonmembership where the union did not admit the employee to membership on racial grounds. International Machinist v. Street, 367 U.S. 740, at 758.

While this Court has recognized the Constitutional issues involving the forced collection of union dues, and has also provided for the judicially created duty of fair representation, ("DFR"), "A union's duty of fair representation is akin to the duty owed by other fiduciaries to their beneficiaries; see: Air Line Pilots Association v. O'Neill, 113 L.Ed

2d 51, at 54, which provides fertile judicial grounds for certiorari and a decision which resolves the Constitutional crisis herein.

Petitioner was discharged for the alleged failure to "pay union dues", when the applicable law and agreement required Petitioner to become a union member, which Petitioner did attempt to do, or if Petitioner did not attempt to become a union member to pay for the cost of negotiating and administering the agreement. In this case, defendants unlawfully used the narrow and constitutionally limited union dues issue to punish an employee, see: Gellert v. Eastern Air Lines, 370 So.2d 802, Eastern v. Gellert, 431 So.2d 329, and Eastern v. Gellert, 438 So.2d 923, and to unlawfully use the RLA union security for their purpose.

Defendants Defaulted Under Rule 56

The instant petition is based upon exceptional circumstances, in which Petitioner's summary judgements were denied by a judge under criminal investigation, and adequate relief cannot be obtained in any other form or from any other court, and the granting of certiorari, will be in aid of the Court's appellate jurisdiction.

Petitioner filed a motion for summary judgement against defendant Travelers Insurance Corporation, ("Travelers"), and the Pension Dispute Board, ("PDB"), on April 7, 1993.

Defendants Travelers and the PDB filed a "motion to strike" with out one scintilla of evidence under Rule 56 and completely disregarded the requirements of Rule 56 and Local Rules 7.1 and 7.5. Motions are not a proper and accepted method to respond to motions in general, but they are considered fatal to nonmoving parties in opposition to Rule 56 summary judgement motions.

In specific, motions "to strike" are proper only when used against pleadings, and are inappropriate and cannot be considered in a Rule 56 motion for summary judgement. Superior Beverage Co. v. State of Ohio, 324 F.Supp. 564

(N.D. Ohio 1971), Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880 (9th Cir. 1983), Hrubec v. National Railroad Passenger Corp., 829 F.Supp. 1502 (N.D. Ill. 1993), O'Connor v. State of Nevada, 507 F.Supp. 546 (D. Nev. 1981).

All other defendants also defaulted in meeting their specific burden under Rule 56 and Local Rules 7.1 and 7.5. Defendant Eastern Airlines, Inc., ("Eastern"), also filed a motion to strike, and defendants Air Line Pilots Association, ("ALPA"), and the Pension Benefit Guaranty Corporation, ("PBGC") filed unresponsive motions to stay and oppose. Defendants failed to file required and responsive memorandums of law, and all defendants therefore are in default, and Petitioner's proper motions for summary judgements should have been granted.

> "Summary judgement procedure is properly regarded not as disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action' . . . there can be no genuine issue as to any material fact', since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317 at 328 and 323.

Petitioner provided his voluntary authorization for the deduction of his union security obligations, as received from the files of defendant ALPA, and attached this with an affidavit to his motions for summary judgement.

Defendant's defense to this suit has been based solely upon Petitioner's discharge of his employment, and this discharge was for the alleged "failure to pay" his union security obligations, which triggers Petitioner's First, Fifth and Fourteenth Amendments rights, a burden which defendants had to overcome in their response to a Rule 56 summary judgement motion, to which all defendants defaulted.

STATEMENT OF THE CASE

Petitioner was a long term pilot employee of defendant Eastern Airlines, Inc., with an employment date of February 11, 1963, with the rank of Captain, and vested under the Employee retirement Income Security Act, ("ERISA"), and eligible for voluntary retirement on October 2, 1982.

Petitioner joined defendant Air Line Pilots Association, ("ALPA"), the exclusive bargaining representative of Eastern pilots, and assigned a voluntary deduction for his union security obligations under the Railway Labor Act, ("RLA"), 45 U.S.C. 152, Eleventh (b). during December 1971, and has not executed a revocation, and this authorization was continuously in effect at least until January 13, 1993, when a copy of this was furnished to Petitioner from defendant's ALPA/Herndon office by telephonic facsimile.

Petitioner was a plaintiff in a number of court cases against Eastern, as to Eastern's retaliation against Petitioner, as to his testimony involving an L-1011 airline crash in the Everglades near Miami in 1972, while Petitioner was not on board, his testimony resulted in a modification of the autopilot system.

Petitioner has been an outstanding Eastern pilot employee, and the controversy was not based on Petitioner's rights under the agreement, but were based on laws, regulation of the United States, as they applied to the safe operation of aircraft in air commerce, and coming under the Transportation Act.

Petitioner's First, Second and Third Amendment Complaints were dismissed sua sponte, and on motion, since these complaints named two high ranking officials of the union, and two high ranking officials of the employer as defendants.

These four defendants also represented the union and employer on the Pension Dispute Board, ("PDB") , this board is authorized to hear pension disputes, created under the provisions of ERISA, these members were fiduciary to Petitioner's pension claims.

The court granted these motion to dismiss with prejudice, based upon their position on this board, and assigned them "arbital immunity". Petitioner's suit documents that these defendants had an interest in the outcome of Petitioner's pension claim, two of the defendants were also

beneficiary of the same and exact defendant plan, and as union members used Petitioner's discharge for the alleged failure to pay union dues, to also deny his ERISA pension.

The other two defendants were high ranking officials of defendant Eastern, and defendant Al Gibson, first covertly approved Petitioner's discharge, then as a fiduciary, also denied Petitioner's vested ERISA pension benefit.

These defendants failed to call in a neutral, but ruled against Petitioner in a four-man board, and therefore there is no privilege, no arbital immunity. Intern. Union, United Auto. WKRS. v. Greyhound Lines, 701 F2d. 1181 (1983)

The appeals court ruled that the district court's order was not a final order, EXHIBIT A., but the district court has now granted arbital immunity to the other two defendants, and failed to grant reconsideration, and with out the intervention of this Court, Petitioner would be required to proceed in a new suit against these defendants. Omnibus Order On Pending Motions, dated September 13, 1993, EXHIBIT B., and Omnibus Order, dated April 14, 1994. EXHIBIT C.

Petitioner has been provided prima facie evidence, which all came from defendants, Treasurer Report of defendant ALPA, which records over 34 million dollars spent for political, organization expenses to which Petitioner objected. ALPA informed Petitioner: "Under Document 102 the costs of the arbitration are your responsibility since you filed an appeal in this matter.", while the defendants and the so called neutral arranged otherwise, which documents fraud, and raises issues as to bribery of a public official, and raises issues if petitioner had a fair and impartial hearing in this particular arbitration.

Petitioner has provided sufficient prima facie evidence to invoke the jurisdiction of this Court on certiorari, as to denial of due process, both in arbitration and the district court below, defendants' clandestine payment of money to an arbitrator, discharge of employment and denial of ERISA benefits by a fiduciary, and criminal investigation of the trial judge.

ARGUMENT

The granting of this petition for certiorari will greatly aid the Court's appellate jurisdiction, as the exceptional circumstances in this cause bring considerations of Constitutional questions under the First, Fifth, Seventh and Fourteenth Amendments, and adequate relief cannot be obtained in any other form and from any other court.

The United States Court of Appeals, Eleventh Circuit, has sanctioned and departed from accepted and usual course of judicial proceedings, in denying a writ of mandamus to examine Petitioner's due process rights under the Fifth Amendment.

The Constitution guarantees judicial integrity, free from a taint of criminal wrong doing, and protects citizens in their pursuit of justice. Petitioner could not receive a fair and impartial hearing in the district court while the judge was under criminal investigation. The allegations of criminal wrong doing was based upon bribery, and violations of federal ethical standards in the acceptance of gratuities.

Petitioner has protection under the Fifth Amendment's

due process clause, since the judge below has used the awesome power of the district court to deny Petitioner's rights to summary judgements under Rule 56 Fed.R.Civ.P., raising a clear violation of Petitioner's Seventh Amendment rights to a speedy, and inexpensive resolution of the instant action, a right which has been recognized by this Court in many prior cases.

Petitioner has met all procedural requirements for the entry of his motions for summary judgements, nor have defendants raised, or the court below found any procedural defects, and this Court has found that a period of one year, prevents the nonmoving party from claims of being railroaded, and Rule 56(f), also provides relief if further discovery should be required, and therefore petitioner's motions should have been granted under Celotex Supra, Anderson Supra, and Matsushita Supra.

Petitioner has also met the governing substantive law requirements, as this Court has established Constitutional rights under the First, Fifth and Fourteenth Amendments under the forced collection of union dues, IAM v. Street Supra.

Petitioner's material facts have established that there are no genuine issues between the parties, defendants have no admissible evidence upon which a jury could rule in their behalf, and Petitioner's summary judgement should have been granted as a matter of law.

Petitioner provided evidence from defendants' own files, ONE, that Petitioner applied for union membership, and while this application was pending, defendant ALPA requested his discharge for the non-payment of union dues. TWO, defendants had in their files, voluntary union dues deduction authorizations, current and in effect from December, 1971 at least until January 13, 1993.

THREE, Petitioner objected under the Constitution to the use of his money for political purposes, and as a non-member objected to the payment of money beyond the cost of negotiating and administering the contract.

FOUR, Petitioner did pay the money demanded by defendant ALPA, including those earmarked for that union's political purposes.

FIVE, Defendants also included Petitioner's independent rights under the Employee Retirement Income Security

Act, and Worker Compensation Laws in the harsh and punitive provisions of the forced collection of union dues, and have used an unlawful discharge under the forced collection of union dues, to also include the loss of benefits under these statutes.

SIX, Defendant ALPA, as the sole bargaining agent representing Petitioner, has denied its duty of fair representation, and has joined the other defendants to unlawfully discharge Petitioner's employment, for reasons other than those recognized under the provisions of the RLA's (2)11th, Union Security.

WHEREAS, the Supreme Court has recognized Petitioner's Constitutional rights under the First, Fifth and Fourteenth Amendments of the Constitution, under the provisions of the Railway Labor Act's (2)11th, forced collection of union dues. This Court has not ruled on an actual discharge of a minority employee, who was denied union membership, and as a non-member objected to the use of his dues for political purposes, and had voluntary authorization for the deduction of his dues, and finally paid the money demanded, including those for political purposes, in

clear violation of the Constitution.

Based upon the foregoing facts, this Petition for Writ of Certiorari should be granted. The Supreme Court should resolve these Constitutional questions, and grant the relive requested, since adequate relief cannot be obtained in any other form or from any other court.

These extraordinary circumstances provide for granting certiorari, and the resolution of Petitioner's rights under the Constitution.

Respectfully submitted,

/s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing has been served this _____ day of _____, 199___, by U.S. Mail to:

Mr. Drew S. Days III
Solicitor General
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Washington, D.C. 20530

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U.S. Court of Appeals for
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Appendix

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-4091

DANIEL G. GELLERT,
Plaintiff-Appellant,

versus

EASTERN AIR LINES FIXED BENEFIT
RETIREMENT INCOME PLAN FOR PILOTS,
an employee benefit pension plan,
EASTERN AIRLINES, INC., solely as
Administrator of such defendant,
WILLIAM R. TEGTMAN, NOEL HONOHAN,
CHARLES COPELAND, JACK N. MOGUS,
ALAN G. GIBSON and PENSION BENEFIT
GUARANTY CORPORATION,
Defendants-Alleppees,
EASTERN AIRLINES PILOTS RETIREMENT BOARD,
ETC.,
Defendants.

Appeal from the United States District Court for the
Southern District of Florida

Filed November 20, 1992

Before FAY, DUBINA, and BLACK, Circuit Judges.

BY THE COURT:

The appellees' motions to dismiss the appeal are GRANTED. The district court's orders granting the motion to dismiss of appellees Mogus and Copeland and directing the entry of a final judgement in their favor are not final and appealable because the district court did not make the express determination that there was no just reason for delay in the entry of judgement as required by Fed.R.Civ.P. 54(b). 28 U.S.C. Par. 1291; see Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368-69 (11th Cir.) **cert. denied**, 464 U.S. 893 (1983). That is especially true in this case since appellant has filed amended complaints, which are presently pending in the district court, attempting to reassert claims against Mogus and Copeland. Accordingly, this appeal is DISMISSED for lack of jurisdiction

EXHIBIT A

Excerpts from: UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 90-1113-CIV-MOORE

DANIEL G. GELLERT,
Plaintiff,

vs.

EASTERN AIRLINES FIXED BENEFIT
RETIREMENT INCOME PLAN FOR PILOTS
et. al.,
Defendant

Filed Sept. 13, 1993

OMNIBUS ORDER ON PENDING MOTIONS

I. MOTION TO DISMISS

Defendants William Tegtman and Alan Gibson sought dismissal of Plaintiff's action against them because of their status as members of the Railway Labor Act ("RLA") dispute board. Judge Federico A. Moreno previously dismissed Plaintiff's action, with prejudice, against several members of the RLA dispute board, i.e. Jack Mogus and Charles Copeland because of that same status. See Order of Judge Moreno, entered September 4, 1991 (citations omitted). Plaintiff alleges that Gibson and Tegtman were members of the RLA dispute board.

See Fourth Amended Complaint at Par. 15 and 16, respectively. Accordingly, Defendants Tegtman and Gibson are dismissed from this action with prejudice consistent with the law of this case. Defendant's Motion to Dismiss (DE #123) is GRANTED.

V. MOTIONS FOR SUMMARY JUDGEMENT

Plaintiff filed numerous motions for summary judgement during the pendence of the motions to strike the Third and Fourth Amended Complaints. Accordingly, Plaintiff's Motions for Summary Judgement based upon failure to respond to discovery or the Amended Complaints are DENIED.

DONE AND ORDERED in chambers at the United States Courthouse, Federal Courthouse Square, Miami, Florida this 10th day of September, 1993.

/s/_____
K. MICHAEL MOORE
UNITED STATES DISTRICT COURT JUDGE

cc:
Daniel Gellert, pro se
Counsel of Record

EXHIBIT B

Excerpt from:

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 90-1113-CIV-MOORE

DANIEL G. GELLERT,
Plaintiff,

vs.

EASTERN AIRLINES FIXED BENEFIT
RETIREMENT INCOME PLAN FOR PILOTS et.
al.,
Defendants

Filed on April 14, 1994

OMNIBUS ORDER

The Court places the Plaintiff on notice that if he files additional summary judgement motions without leave he will be subject to sanctions, including the dismissal of his complaint.

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motions for Summary Judgement (DE #230); (DE #240); (DE#244); and (DE#252) is hereby DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 15th day of April, 1994.

/s/_____
K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

copies provided:
Counsel of Record

EXHIBIT C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 93-4928

IN RE:

DANIEL G. GELLERT,

Petitioner.

Filed Feb. 23, 1994

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

Before: ANDERSON, COX and BLACK, Circuit Judges.

BY THE COURT:

Petitioner's application for a writ of mandamus is DENIED because petitioner has an adequate remedy by appeal.

EXHIBIT D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-4928

Filed July 8, 1994

IN RE:

DANIEL G. GELLERT,
Petitioner

On Petition for Writ of Mandamus to the
United States District Court for the
Southern District of Florida

BEFORE: ANDERSON, COX and BLACK, Circuit Judges.

BY THE COURT:

Petitioner's "Suggestion of Rehearing In BANC," treated as a motion for reconsideration of this Court's order dated February 23, 1994, denying his petition for writ of mandamus, is DENIED.

EXHIBIT E.

Eleventh Union security agreement; check-off

Notwithstanding any other provision of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted --

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class; Provided, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or termi-

ployee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership

(b) to make agreements providing for the deductions by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

EXHIBIT F.

Supreme Court of the United States

No. A-264

Daniel G. Gellert
Petitioner

v

United States District Court for the
Southern District of Florida

ORDER

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including December 5, 1994.

/s/_____
Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

Dated this 17th
day of October, 1994.

EXHIBIT G